

REMARKS

I. Status of Claims

Prior to entry of this paper, **Claims 1-56** were pending. **Claims 1-56** were rejected. In this paper, Claims 1 and 29-32 are amended; no claims are cancelled or added. Claims 1-56 are currently pending. No new matter is added by way of this amendment. For at least the following reasons, Applicants respectfully submit that each of the presently pending claims is in condition for allowance.

II. Claim Rejections - 35 U.S.C. § 112

Claims 1-56 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With this paper, **Claims 1-56** have been amended to clarify the nature of the ‘determining whether to accept’ step or function respectively recited therein. The clarifications made in each of these claims particularly provide an antecedent basis for the “refusing” function previously recited therein. The suggestion made in the instant Office Action is hereby acknowledged and appreciated, and it is respectfully submitted that the clarifications made herein substantially conform to this suggestion for amendment. Accordingly, in light of these amendments, withdrawal of the rejection(s) of these claims under 35 U.S.C. §112, 2nd paragraph, is respectfully requested.

III. Double Patenting

Claims 1, 3, 4, 12, 15, 29, 30, 31, 32, 33, 34, 43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 3, 4, 14, 15, 30, 38, 46, 47 of copending US Patent Application No. 10/698,168 in view of US Patent Publication 2003/0204634 issued to Pinkerton et al. (Pinkerton).

While respectfully traversing the grounds of this rejection, it is respectfully submitted that, should this provisional obvious-type patenting rejection be the only remaining grounds of rejection

in the application, this provisional rejection will be addressed in a timely manner as is discussed in MPEP 804.

IV. Claim Rejections - 35 U.S.C. § 103

Claims 1-24, 27-52, 55-56 were rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,697,868 issued to Craft et al. (Craft) in view of US Patent Publication No. 2003/0204634 issued to Pinkerton et al. (Pinkerton).

With this paper, **Claims 1 and 29-32** have been amended to further clarify the operations of second network protocol stack. Particularly, for example, Claim 1 has been amended to recite:

determining whether to accept or refuse the transfer of the network connection at the second network protocol stack based at least in part on a state of the second network protocol stack and a nature of the network connection, wherein a determination to refuse the transfer further comprises refusing the transfer of the network connection based at least in part on the state of the second network protocol stack and the nature of the network connection, and wherein a determination to accept the transfer of the network connection at the second network protocol stack further comprises accepting the transfer if the network connection exceeds the capability of the second network protocol network stack.

Support for such a limitation, as amended, can be found throughout the application as originally filed, including particularly on line 21, page 30 through line 16, page 30 of the specification.

After carefully reviewing the applied grounds of rejection, it is respectfully submitted that Craft, even when taken in further view of the teachings of Pinkerton, does not teach or suggest at least the above reproduced limitation of amended Claim 1.

As noted previously, Craft fails to teach or suggest applying such inspection and determination as is further embodied in this limitation. Transfers in the system of Craft are disclosed as being accepted and processed (col. 9, lines 11-31 of Craft). Receiving a transfer, along with the context of the transfer, results in the initiation of fast-path processing (col. 9, lines 27-30 of Craft). The teachings of Craft also include a situation where data placed at a given host destination

is ‘treated’ as being accepted by an upper layer of an application (col. 11, lines 48-54 of Craft). Such straightforward processing – or even a presumption of processing – does not teach or suggest a conditional or optional nature to the transfer of a connection, much less the step of “*determining whether to accept or refuse the transfer of the network connection at the second network protocol stack*” as it is further claimed in amended Claim 1. The Office Action, at the last paragraph on page 7, appears to agree with such an interpretation of Craft, further relying upon Pinkerton to at least suggest a limitation as it was previously presented.

However, it is respectfully submitted that Pinkerton does not teach or suggest the limitation of “*based at least in part on the state of the second network protocol stack and a nature of the network connection*” as it is further claimed in the claimed invention. The system of Pinkerton refuses or accepts a TCP connection that is subject of an offload request based on a summation of “resources”. Particularly, the system of Pinkerton determines if an offload is possible based on a calculation of “whether it has resources available to offload the TCP connection”(col. 10, lines 57-64 of Pinkerton). Such “resources” include both “framing resource requirements and network resource requirements” as are further determined and forwarded by components in a network stack (202) (col. 10, lines 17-56 of Pinkerton). However, “resources” are not the only aspect of a network connection that holds value to a consideration of whether or not to offload or transfer the connection. Such a distinction is further recognized and detailed in the claimed invention of at least Claim 1.

In contrast with the teachings of Pinkerton, “*determining whether to accept or transfer*” a connection in the claimed invention of at least Claim 1 is the based on a “*state*” of a second network protocol stack and the “*nature*” of the network connection that is the subject of the transfer. The result of employing such an alternative basis for accepting or refusing an offload is particularly demonstrated in the limitation of “*wherein a determination to accept the transfer of the network connection at the second network protocol stack further comprises accepting the transfer if the network connection exceeds the capability of the second network protocol network stack*”. The numerical or ‘calculation’ basis for the decisions in Pinkerton (col. 10, lines 57-64) fails to at least suggest these characteristics, as claimed, under which such a connection, one that “*exceeds the*

capability of the second network protocol stack", is still accepted for transfer at the second network protocol stack. At root, 'resources' are not equivalent in scope to a "*nature*" or "*state*", including as it is further represented in the functions and limitations claimed in at least amended Claim 1. In fact, it is respectfully submitted that the teachings of Pinkerton, in explicit consideration of the "available resources", would refuse such a connection, rather than "*accepting*" it as is further claimed in at least Claim 1. At least in light of such differences, it is respectfully submitted that Craft, even in view of Pinkerton, does not teach or suggest the claimed invention as it is further presented in Claim 1, including when the limitations thereof are considered as a whole. Accordingly, withdrawal of this rejection is respectfully requested.

So far as **Claims 2-56** depend from Claim 1 or have been amended to include limitations that are similar, albeit different, to those discussed herein with regards to Claim 1, it is respectfully submitted that the remarks presented herein are applicable to these claims as well. Accordingly, withdrawal of the rejections of these claims under 35 U.S.C. §103(a) is also hereby respectfully requested.

V. Conclusion

In view of the above amendment, applicant's representative believes the pending application is in condition for allowance.

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Respectfully submitted,

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